

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HOLTEC INTERNATIONAL CORPORATION, a
Delaware Corporation,

Plaintiff,

Civil Action No.:
09-cv-274 (RMB) (AMD)

v.

PREFERRED METAL TECHNOLOGIES, INC.,
an Illinois Corporation,

Defendant/Third-Party
Plaintiff,

v.

UPS GROUND FREIGHT, INC., d/b/a UPS
FREIGHT, f/k/a OVERNITE
TRANSPORTATION,

Third-Party Defendant.

**DECLARATION OF
GERRY LAVERTY IN
SUPPORT OF UPS
FREIGHT MOTION FOR
SUMMARY
JUDGMENT**

I, Gerry Laverty, hereby swear and affirm:

1. I am employed by UPS Freight as a Cargo Claims Supervisor and I have personal knowledge of the statements made in this Affidavit. I incorporate by reference herein my prior Affidavit dated November 17, 2010 as if set forth fully at length herein.

2. Attached hereto as Exhibit "A," is a true and accurate copy of a relevant portion of the UPS Freight Tariff, Item 166-A, Section 1 (A). UPS Freight maintained

classifications and a rules tariff circular in effect at the time of the shipment described in this case available to the shipper on request.

3. I read the Affidavit of Timothy Stewart of Preferred Metal Technologies ("PMT"). Among other things, he appears to be trying to change the description of the goods from the description PMT initially supplied on its own form of Bill of Lading.

4. In any event, no matter how PMT now, after the fact, wants to describe its metal Racksavers, Tariff Item 166-A, Section 1 (A), indicates that the maximum amount of liability for UPS Freight, no matter the commodity shipped, is limited to \$25.00 lb.

5. Also, the Affidavit of Timothy Stewart of PMT indicated PMT paid a premium over the freight for "exclusive use."

6. "Exclusive use" is a term in the transportation industry meaning no other cargo will be on the trailer. It does not mean the cargo will not be handled, transloaded or cross-docked (meaning it comes off a trailer then onto a dock and crosses the dock to another (or even the same trailer)). That is called a "dedicated trailer."

7. PMT seems to confuse the terms.

8. PMT thinks the cargo was damaged after being

either dropped or impaled by a forklift. In any event, "exclusive use" of a trailer has nothing to do with whether the cargo was dropped or impaled.

9. As to PMT's allegation it paid more for "exclusive use," Timothy Stewart of Preferred Metal Technologies does not provide a freight bill, a check or anything else to prove that or what amount it paid.

10. The PMT Bill of Lading was prepared and filled out by PMT. It does not say anything about "exclusive use" on it.

11. UPS Freight purges its records of shipments 3 years after the shipment as per company practice. As a result, UPS Freight does not have the freight bill anymore. 3 years is usually enough time for a claim within 9 months and to allow for an additional 2 years and 1 days for the shipper to sue.

12. The shipment in this case was in November 2005.

13. The records of the shipment, paper and electronic, were purged in or about November 2008.

14. As I understand it, UPS Freight was not even sued by PMT until about May 2009, about 3 ½ years after the shipment.

15. Under Federal regulations, 49 C.F.R. § 379, Appendix A, Category I, motor carriers like UPS Freight

only need to retain shipping documents such as Bills of Lading, Freight Invoices and Delivery Receipts for 1 year. UPS Freight retains its records for 3 years.

[Signature Page Follows]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the forgoing is true and correct. Executed on January 24, 2011.

S/ Gerry Lavery
Gerry Lavery

Dated: January 24, 2011

EXHIBIT “A”

**UPS FREIGHT
TARIFF UPGF 102-C
SECTION 1**

ITEM 166-A

**CARRIER LIABILITY
(See notes 1-15)**

This rule explains the liability limits and conditions established by Carrier for all shipments handled. SECTION 1 "GENERAL LIABILITY" applies except where a more specific liability provision exists in this item.

SECTION 1 - GENERAL LIABILITY

- (a) Except as provided in (b) below, Carrier's liability for loss, damage, or destruction, to any shipment or part thereof is limited to the actual invoice value of the commodities or articles lost, damaged or destroyed, or twenty five dollars (\$25.00) per pound per package, whichever is less, unless Excess Declared Value Coverage is requested and the additional charges are paid.
- (b) Carrier's liability for loss, damage, or destruction to commodities or articles subject to liability limitations on the Bill of Lading or as provided in the NMFC is limited to the (1) actual invoice value of the commodities or articles lost, damaged or destroyed; (2) limited liability provisions of the Bill of Lading; (3) applicable limited liability provisions of the NMFC; or, (4) twenty five dollars (\$25.00) per pound per package, whichever is less, unless Excess Declared Value Coverage is requested and the additional charges are paid.

SECTION 2 - LIABILITY FOR COMMODITIES OR ARTICLES SUBJECT TO EXCEPTION RATINGS (See note 6)

Carrier's liability for loss, damage, or destruction to any shipment or part thereof for which the charges are determined by class exception ratings or freight of all kinds class exceptions is limited to the (1) actual invoice value of the commodities or articles lost, damaged or destroyed; (2) limited liability provisions of the Bill of Lading; or, (3) applicable limited liability provisions of the NMFC; whichever is less, subject to the maximums by exception class as shown below, unless Excess Declared Value Coverage is requested and the additional charges are paid.

CLASS	*MAXIMUM LIABILITY	CLASS	*MAXIMUM LIABILITY
50	\$0.99	100	\$15.00
55	\$1.98	110	\$15.25
60	\$2.53	125	\$15.81
65	\$4.90	150	\$16.10
70	\$5.50	175	\$17.15
77.5	\$7.25	200	\$18.10
85	\$10.25	250 & up	\$20.00
92.5	\$12.25		

*Maximum liability per pound per package.

SECTION 3 - LIABILITY FOR ITEMS OTHER THAN NEW, INTERPLANT MOVES AND INTERNET AUCTION ITEMS

An Interplant Move is a shipment by a company from one of its facilities to one or more of its other facilities (or the facilities of its divisions or subsidiaries) of any items that are not manufactured or distributed by the company as part of its normal business operations. Facilities of a company include, but are not limited to, its offices, warehouses, distribution centers and manufacturing facilities. Items not manufactured or distributed by a company in its normal business operations include, but are not limited to, items such as equipment, machinery, accessories, raw materials, office equipment, electronic equipment (including computers), spare parts and supplies utilized by the company in its business operations.

Commodities or articles which are in any way other than new (including, but not limited to, commodities or articles which are "used", "reconditioned", "refurbished", or "rebuilt"); commodities or articles shipped as part of an Interplant Move; and commodities or articles purchased through Internet auctions (except as provided in note 7), whether listed on the Bill of Lading as such or not, will be accepted for transportation subject to the following Carrier liability limitations and conditions:

- (a) Except as provided in (b) below, Carrier's liability for loss, damage, or destruction to any shipment or part thereof is limited to the actual invoice value of the commodities or articles lost, damaged or destroyed, or 10 cents per pound per package, whichever is less, unless Excess Declared Value Coverage is requested and the additional charges are paid.
- (b) Carrier's liability for loss, damage, or destruction to commodities or articles subject to liability limitations on the Bill of Lading or as provided in the NMFC is limited to, (1) the actual invoice value of the commodities or articles lost, damaged or destroyed; (2) limited liability provisions of the Bill of Lading; (3) applicable limited liability provisions of the NMFC; or, (4) 10 cents per pound per package, whichever is less, unless Excess Declared Value Coverage is requested and the additional charges are paid.

SECTION 4 - LIABILITY FOR SHIPMENTS PRICED BY HANDLING UNIT

Carrier's liability for loss, damage, or destruction to any shipment or part thereof that has been priced per handling unit (per piece, per pallet, per drum, etc.), is limited to the (1) actual invoice value of the commodities or articles lost, damaged or destroyed; (2) limited liability provisions of the Bill of Lading; (3) applicable limited liability provisions of the NMFC; or (4) one dollar (\$1.00) per pound per package; whichever is less, unless Excess Declared Value Coverage is requested and the additional charges are paid.